

PROVIDING FOR THE ACQUISITION OF LANDS BY THE UNITED STATES REQUIRED FOR THE RESERVOIR CREATED BY THE CONSTRUCTION OF OAHE DAM ON THE MISSOURI RIVER AND FOR REHABILITATION OF THE INDIANS OF THE STANDING ROCK SIOUX RESERVATION IN SOUTH DAKOTA AND NORTH DAKOTA

JUNE 27, 1956.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SISK, from the Committee on Interior and Insular Affairs, submitted the following

R E P O R T

[To accompany H. R. 5608]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H. R. 5608) to provide for the acquisition of lands by the United States required for the reservoir created by the construction of Oahe Dam on the Missouri River and for rehabilitation of the Indians of the Standing Rock Sioux Reservation in South Dakota and North Dakota, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendment is as follows:

Pages 1 and 2, strike all of section 1 and insert the following language:

That title to all tribal, allotted, assigned, and inherited lands within the Standing Rock Reservation in South Dakota and North Dakota in which Indians have a trust or restricted interest and that are within the Taking Area described in section 16 of this Act is hereby taken by the United States for the purposes of the Oahe Dam and Reservoir project on the Missouri River in South Dakota: *Provided*, That the effective date of this Act shall be the date when the Secretary of the Interior shall by proclamation declare that the provisions of the Act have been accepted by a three-fourths majority of the adult Indians of the Standing Rock Reservation, as shown by the tribal rolls of the reservation.

Page 2, line 24, strike the figure "\$10,370,663;" and insert the figure "\$5,575,000;"

Page 3, line 7, strike the figure "\$2,799,663" and insert the figure "\$1,769,168".

Page 3, line 15, strike the word "staff." and insert the following:

staff: *Provided further*, That one-half the balance of said sum shall be consolidated with the appropriations made pursuant to section 5 of this Act and shall be expended in accordance with the provisions of such section 5, and that no part of the remaining one-half of such funds shall be used for per capita payments.

Page 3, lines 23 and 24, strike the words "part II" and insert the words "section 16".

Page 4, line 9, strike the words "agency facilities" and insert the words—

essential agency facilities, as determined by the Secretary of the Interior and including

Page 4, strike everything beginning on line 15 through page 5, line 7.

Page 5, lines 10 and 11, strike the figure "\$16,000,000," and insert the figure "\$8,500,000,".

Page 5, strike all of lines 12 through 23 and insert the following language:

of the United States to the credit of said Indian tribe until expended for the purpose of developing individual and family plans, relocating, reestablishing, and providing other assistance designed to help improve the economic and social status of all members of said tribe who reside on the reservation at the time of the passage of this Act, whether or not residing within the taking area of the Oahe project: *Provided*, That

Page 6, line 3, strike the figure "17" and insert the figure "15".

Page 6, line 4, strike the word "fifteen" and insert the word "ten".

Page 6, line 5, strike the words:

That 20 percentum of the sums appropriated for rehabilitation shall be devoted to educational grants and shall remain on deposit in the Treasury of the United States at 4 percentum interest for a period of twenty-five years.

and insert the words:

That no part of such funds shall be used for per capita payments.

Page 6, line 14, strike the words "part II" and insert the words "section 16.".

Page 6, line 23, following the word "project" change the colon to a period and strike the language of the proviso through page 7, line 4.

Page 7, lines 12 and 13, strike the words "Superintendent of Standing Rock Reservation" and insert the words "Secretary of the Interior,".

Page 8, lines 13 and 14, strike the words "the expiration of the time provided for in section 7 hereof" and insert the words "such time".

Page 9, line 6, strike the words "Interior and the Tribal Council," and insert the word "Interior,".

Page 9, lines 12 to 20 inclusive, strike all of section 11.

Page 9, line 21, renumber "SEC. 12." to read "SEC. 11."

Page 9, line 24, strike the words "land in the name of the".

Page 10, strike all of lines 1 through 6 and insert the following language:

other land, the title to which shall be taken in the name of the United States in trust for such individual, except as otherwise provided in this section. Any such trust may be terminated when in the judgment of the Secretary of the Interior the Indian beneficiary is no longer in need of special assistance in handling his affairs. The

Page 10, line 13, strike the words "purchase and reconveyance as is herein described," and insert the word "purchase."

Page 10, line 22, strike all of the proviso through page 11, line 3. Insert the following language:

Provided, That unrestricted title to any lands so purchased that are outside and not adjacent to the Standing Rock Reservation shall be taken in the name of the Indian purchaser: *Provided further*, That for the purposes of this section tribally owned land may be sold to and purchased by or for individual members whose lands are within the Taking Area.

Page 11, lines 4 to 9, inclusive, strike all of section 13.

Page 11, line 10, renumber "SEC. 14." to read "SEC. 12."

Page 11, line 23, renumber "SEC. 15." to read "SEC. 13."

Page 12, line 13, renumber "SEC. 16." to read "SEC. 14."

Page 13, line 10, insert a period following the word "court" and strike the balance of the sentence.

Page 13, line 11, renumber "SEC. 17." to read "SEC. 15."

Page 13, line 12, strike the figure "\$26,470,663," and insert the figure "\$14,075,000,".

Page 13, lines 14 and 15, strike the words "3 and 4" and insert the words "3, 4 and 14".

Page 13, line 16, strike all of section 18 through page 14, line 6.

Page 14, line 7, renumber "SEC. 19." to read "SEC. 16."

PURPOSE OF THE BILL

The purpose of H. R. 5608, as amended, introduced by Congressman Berry, is to reimburse the members of the Standing Rock Sioux Reservation in South Dakota and North Dakota for the lands acquired by the United States and utilized for the reservoir created by the construction of the Oahe Dam on the Missouri River, to compensate them for treaty and tribal damages, to provide for the rehabilitation of the members of the Standing Rock Reservation, and for other purposes.

H. R. 5608 comes to Congress as the result of Public Law 870 of the 82d Congress, which directed the Army engineers and the Bureau of Indian Affairs to negotiate with the tribal councils to determine a fair and equitable settlement for the taking of tribal and allotted lands on the Cheyenne River and Standing Rock Reservations in North and South Dakota. Public Law 870 also provided that any such agreement entered into should be approved by a three-fourths majority of the adult Indians of such tribes and by the Congress.

It further provided that in the event of their failure to arrive at an agreeable settlement, the Indian tribes should ask Congress to make such determination. Since the Army engineers and the tribal council were unable to reach an amicable settlement, H. R. 5608 follows the directive of Public Law 870 in bringing this matter to Congress for settlement. The settlement with the Cheyenne River Tribe has been completed pursuant to Public Law 776, 82d Congress.

H. R. 5608, as amended, transfers to the United States title to all the lands within the taking area of the Oahe Dam and Reservoir project described in section 17 of this act which belong to the Indians of the Standing Rock Sioux Reservation. As compensation for said lands, excluding mineral rights which are reserved to the Indian owners, the United States agrees to pay, out of funds appropriated for the construction of the Oahe project, the sum of \$1,769,168. The bill also provides for the payment of \$3,805,832, as compensation for indirect damages sustained by the Indians, as a tribe, resulting from the taking of 55,994 acres of bottom land along the Missouri River.

The bill also provides, in accordance with the express provisions of Public Law 870, for a general rehabilitation plan for the entire reservation, including developing individual and family plans, relocating and reestablishing, and providing other assistance designed to help improve the economic and social status of all members of the tribe residing on the reservation, whether residing on the 55,994 acres of land taken or not. The sum of \$8,500,000 is provided for this purpose. This sum was arrived at in approximately the same manner as was the final settlement with the Cheyenne River Tribe.

In addition to the above-listed remunerations, the bill as amended provides for expenditures by the United States in amounts indeterminable at this time for the following purposes:

1. Deficiency judgments for fair compensation awarded in judicial proceedings which may be initiated in cases when any individual Indian rejects the final appraisal figures for his lands.

2. Removal and reestablishment of Indian cemeteries, monuments, and shrines within the taking area.

3. Reconstruction of such agency facilities, schools, hospitals, service buildings, agents' and employees' quarters, roads and bridges as determined to be essential by the Secretary of the Interior.

4. Expenses of the tribal council incurred in negotiations leading up to the making and ratification of the agreement embodied in the bill, but not to exceed \$100,000.

In addition to the above, H. R. 5608, as amended, gives the Indians the following rights:

1. The right to cut and remove timber, to salvage any portion of the improvements, without any deduction in the amount paid for the land, provided this is done within 9 months after the effective date of this act.

2. The right to reside on the land without charge after title has passed to the United States, until the gates of the dam are closed.

3. The right to retain all land on the Standing Rock Sioux Reservation in trust status except lands for which the tribe or members of the tribe request in fee.

4. That unrestricted title shall be taken in the name of the Indian purchaser to any lands purchased outside and not adjacent to the Standing Rock Sioux Reservation.

5. The right of any individual landowner to reject the final appraisal made on land and improvements and to have just compensation determined by the United States district courts.

Similar provisions were included in Public Law 870, 82d Congress.

HISTORY OF THE BILL

The Oahe Dam and Reservoir is a portion of the comprehensive plan for the improvement of the Missouri River Basin as authorized by Congress in section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887, 891). Pursuant to section 3 of the act, the Secretary of the Army is authorized to acquire all necessary lands for this project. Under this act five mammoth earthen dams are being constructed. When completed a clear water lake will extend from Yankton, S. Dak., to Fort Peck, Mont. The creation of this huge inland body of water will cover nearly a million acres of some of the most fertile land in the United States—and will provide flood control, hydroelectric power, irrigation and irrigation benefits of use and benefit to areas downstream from the Oahe Dam.

In 1950 Congress approved an act (66 Stat. 46; Public Law 870, 81st Cong.), in which the Chief of Engineers, United States Army, jointly with the Secretary of the Interior, was authorized to negotiate a contract with the members of the Standing Rock Sioux Reservation in North and South Dakota which will provide for conveyance to the United States of the title to all tribal, allotted, and inherited lands or interests therein belonging to the Indians of the tribe which are required by the United States for the Oahe Dam and Reservoir. This act likewise provides for payment by the United States of just compensation for all the land and improvements, of relocation costs, of costs involved in the orderly removal of the Indians, and the cost of complete settlement of all their claims arising because of the construction of the Oahe project. Public Law 870 also directs that the negotiated contracts were to be submitted to Congress, and were not to become effective until ratified by Congress and approved by three-fourths of the adult Indians. The negotiation features of Public Law 870 are necessary because the Sioux Indian Reservations, of which Standing Rock is one, were created by the treaty of April 29, 1868 (15 Stat. 635, 639), which provided that—

No treaty for the cession of any portion of the reservation herein described which may be held in common shall be of any validity or force as against the said Indians, unless executed and signed by at least three-fourths of all the adult male Indians occupying or interested in the same.

This provision probably does not preclude Congress from taking tribal land through the power of eminent domain but it stipulates that in any voluntary transfer of land by the tribe a three-fourths vote of the adult males is required.

Public Law 870 further provided—

that in the event the negotiating parties * * * are unable to agree on any item or provision in the proposed contracts, said items or provisions shall be reported separately to Congress as an appendix to each contract, and shall set out the provisions in dispute as proposed by the advocates thereof for consideration and determination by Congress.

In implementing Public Law 870 in keeping with the treaty of 1868, and in order to assist the negotiators in arriving at the amount of just compensation, an appraisal was made in 1950 by Gerald T. Hart & Associates, Denver, Colo., in hopes of arriving at a figure which would make a voluntary transfer of land and improvements possible. Hart & Associates found that 170 families and 48,000 acres of Indian land would be directly involved by the construction and flooding project. Hart & Associates determined that the land, improvements, timber, and severance had a fair market value of \$1,320,000. The number of acres to be taken was later determined to be 55,994 and this latter amount is the acreage for which payment is computed in this bill as amended. Pursuant to Public Law 870 and following the submission of the Hart Associates appraisal negotiations were conducted by representatives of the United States Army engineers, Department of the Interior, and the negotiating committee of the Standing Rock Sioux Tribal Council in November 1951. The purpose of the negotiation was to arrive at the amount of just compensation for the conveyance to the United States of title to all tribal, allotted, assigned, and inherited lands, improvements, or interests therein belonging to the Indians of the Standing Rock Sioux Reservation required by the United States for the Oahe Dam and Reservoir.

Certified excerpts from proceedings of the United States district courts of North Dakota and South Dakota in the Fort Randall Dam and Reservoir project, south of the Oahe Dam and Reservoir, indicate that after trials before juries or commissions in which both the Government and landowners had opportunity to present evidence and arguments resulted in practically all cases in increases of from 40 to 60 percent over the Government appraisals and offers for settlement. Applying a low mean average increase of 45 percent to the Corps of Engineers offer of \$1,575,000 for land within the taking area for the Oahe Dam and Reservoir would indicate a possible court award considerably in excess of the \$1,769,168 proposed in H. R. 5608. In addition the overhead expenses of hearings on the 932 tracts listed in section 17 of H. R. 5608, as amended, in condemnation proceedings would involve an additional substantial cost to the Government.

It was mutually agreed between the tribal representatives and the Government conferees that consideration be given first to the reaching of an agreement as to the price to be paid by the Government to the tribe for its land and interest therein, including improvements and timber thereon, and severance damages to the individual tracts within the Standing Rock Sioux Reservation. The negotiations failed to result in an agreement as to such a price. Inasmuch as the Hart appraisal was unacceptable to both the tribal council negotiating committee and the Department of the Interior, the negotiators reached an impasse and efforts to arrive at a conciliation of other differences also failed. Thereafter, two additional appraisals of the lands within the taking area were made, one by the tribal council negotiating committee and the other by the Missouri River Basin investigating staff for the Department of the Interior. The Hart and MRBI appraisals considered just compensation for land, timber, and improvements within the taking area. The MRBI staff made no recommendation for a general rehabilitation program whereas the tribal council included investigations into compensation for tangible future damages and appropriations necessary for developing individual family

plans, relocating, reestablishing, and providing other assistance designed to help improve the economic and social status of the Indians of the Standing Rock Reservation.

The following chart indicates the disagreement in figures of just compensation submitted by the four appraisals:

	Tribal council	MRBI (Interior Department)	Hart & Associates	Army engineers	H. R. 5608
Direct damages: Compensation for land, timber, and improvement within the taking area.....	\$2, 799, 663	\$1, 613, 454	\$1, 320, 000	\$1, 575, 000	\$1, 769, 168
Indirect damages: Intangible and/or severance: Intangible.....	7, 571, 000	1 3, 904, 559	-----	-----	3, 805, 832
Tribal rehabilitation.....	16, 000, 000	-----	-----	-----	8, 500, 000
Total.....	26, 370, 663	5, 518, 013	1, 320, 000	1, 575, 000	14, 075, 000

¹ Includes items covering cost of reestablishing homes, ranches, and the economy of the 170 families to be moved out of the taking area but does not include a general rehabilitation program.

In addition to the inability of the negotiators to reach agreement on compensation for land, timber, and improvements, a serious area of disagreement concerned compensation for tangible future damages and the appropriations required for developing individual and family plans, relocating, reestablishing, and providing other assistance designed to help improve the economic and social status of the members of Standing Rock Tribe residing on the reservation at the time of the passage of this act, whether or not they are residing within the taking area of this project. Both the Interior and Army Departments are willing to grant severance damages for the loss of timber, wildlife, and wild products but not to the same extent as claimed by the tribal council. The tribal negotiators asked for \$7,571,000 in payment for wildlife and game, fur-bearing animals, fruit, vegetables, fuel, and timber losses incurred by the construction broken down as follows:

Wildlife, game, fur-bearing animals, etc.....	\$2, 154, 000
Fruit, vegetables, and similar wild products.....	500, 000
Fuel value.....	2, 229, 000
Timber value (commercial, net yield, annual harvest only).....	2, 688, 000
Total.....	7, 571, 000

The MRBI staff recognized that these obligations should be met but recommended payment of the following conservative sums:

Cost of reestablishing homes, ranches, and economy.....	\$726, 546
Timber, wildlife, and wildlife product losses (in excess of appraised value of commercial timber).....	2, 362, 527
Potential increase in value of irrigated land.....	78, 440
Total.....	3, 167, 513

The Department of the Interior is anxious to bring the Indians up to a common standard of independence, education, and decency of living conditions which in many cases does not now presently exist. The Department fully recognizes that removing 170 families from the taking area and placing them on the land already occupied by the other 510 families will work a definite hardship on all 680 families on the reservation but believes that a general program of readjustment should be the subject of separate legislation. To a considerable extent the Department of the Army shares this opinion.

Using data provided by the MRBI Staff Report No. 138 of November 1954, as a basis the tribal council negotiators made a résumé of the following social and economic conditions; housing, water, annual cash income, amount and sources, noncash subsistence values, loss of wildlife and wild product resources, adjustments required by the construction of the Oahe Dam and Reservoir, administration, education, and removal of families and recommended special legislation to provide funds to carry out the program. The tribal council submitted a \$16 million figure fully documented and allocated, if the Indians were to be properly readjusted. This proposed sum was to be allocated as follows:

Education.....	\$3, 200, 000
Agricultural loans.....	3, 000, 000
Land purchase.....	2, 500, 000
Home loans.....	2, 000, 000
Health insurance.....	1, 050, 000
Old people individual homes.....	830, 000
Business loans.....	750, 000
Reforestation.....	400, 000
Domestic water.....	360, 000
Administration.....	400, 000
Small business.....	250, 000
Community activities.....	300, 000
Relocation.....	200, 000
Law and order, wildlife conservation.....	190, 000
Reservoirs and reseeding.....	150, 000
Arts and crafts.....	150, 000
Social and economic study.....	90, 000
Children's home.....	100, 000
Old people's home for reservation at large.....	80, 000
Total.....	16, 000, 000

On the other hand the MRBI staff report recommended a figure of \$737,046 in payment for the cost of reestablishing homes, ranches, and the economy of the Indians. This sum, however, was for rehabilitation only of the 170 families within the taking area and not for total tribal rehabilitation such as the \$16 million total. Recognized by the MRBI staff as items for which aid should be given were: moving and relocating personal properties and persons, moving and reestablishing movable improvements, extra cost of weatherproofing and equipping dwellings, shelter for livestock, domestic and livestock water, additional fences, reduced new income from ranches in adjustment period, cost of repurchasing salvable buildings and improvements and cost of rehabilitating tribal lands.

Following lengthy Subcommittee on Indian Affairs hearings during the 84th Congress, 1st session, and a visit to the Standing Rock Reservation during September 1955, members have amended H. R. 5608, in line with the sums in Public Law 776, 83d Congress, which authorized payments for the Cheyenne River Sioux Indian Reservation. In that settlement Congress increased the MRBI staff report appraisal figure for land within the taking area by 9.589 percent in making payment. This same increase is considered justifiable for the Standing Rock Sioux because land values have risen considerably since the MRBI survey was made in 1951. The MRBI figure (\$1,613,454) plus 9.589 percent represents the sum of \$1,769,163, the figure stipulated in line 21, page 3 of H. R. 5608.

The \$5,575,000 in line 14, page 3, represents a compromise amount between the tribal council (\$7,591,000) and MRBI recommended figures (\$3,167,513) for indirect damages.

The \$8,500,000 in line 3, page 6, is also a compromise figure arrived at after using the per capita payment sum paid in the case of the Cheyenne River Sioux Reservation for comparative purposes.

The tribal rehabilitation claim, authorized in H. R. 5608, as amended, is based on the Cheyenne River Act (Public Law 776), which in turn was enacted pursuant to Public Law 870, providing for complete settlement agreements with the Standing Rock Sioux Tribe, and provides that the sums paid shall be in—

final and complete settlement of all claims, rights, and demands of said tribe or allottees, or heirs thereof, arising out of construction of the Oahe project.

The rehabilitation of the whole tribe as well as those whose land is actually taken is provided for and the methods of such rehabilitation left to the tribal council, subject to approval of the Department of the Interior. The documentation in the record, as to such, proposed methods, specified amounts proposed for education, agricultural loans, home loans, law and order and wildlife conservation, land purchases, health, reforestation, water supply, a children's home, and an old people's home; and similar items for the approximately 4,000 people to be used over a period of 10 years will accomplish complete rehabilitation, looking toward bringing the entire tribe into economic and sociologic independence of further Government support or supervision within the 10-year period. It seeks to speed up the transition of Indian tribes and reservations into full benefits and also full obligations of citizenship. The complete tribal rehabilitation item is plainly connected with and directly related to the main purposes and objectives of the bill necessitated by the taking of the control of the Missouri River and all of its adjacent bottom, timber, and benchlands away from the tribe as a whole and thereby depriving them of their most valuable natural resources and requiring them to adopt new and different methods of maintaining themselves in ordinary standards of life and health, and to provide for their future development, improvement, and progress to complete and permanent independence of Government guardianship and maintenance.

SUMMARY

The Oahe Dam and Reservoir project is deemed necessary by the Government although its construction is resulting in the flooding of over a third of a million acres of the finest bottom lands along the Missouri River. One hundred and seventy Indian families residing on and using 55,994 acres of land for agricultural and grazing are faced with forced evacuation before 1961, when the Oahe project will be completed. Through no action of their own, the Indians must give up their homeland, their homes will be lost, their cattle-raising industry will be sorely disrupted, many of their subsistence pursuits will be curtailed, and their social life will be altered, in addition to losing their finest land. Finally, 510 families will suffer from having their relatives and neighbors moved from the bottom lands onto their

more rugged and less desirable benchlands and uplands. This migration will cause further crowding on the already overcrowded and marginal lands.

The only hope these disrupted families, 680 in number, can possibly have is that the Federal Government will compensate them in money and, in addition, furnish such services as are necessary to obtain a sufficient degree of readjustment and reconstruction. Thus, they will be enabled to make a new start in life and once again attempt to reach a point of development they have a right to achieve. The enactment of H. R. 5608 will help accomplish this goal.

SECTIONAL ANALYSIS

Section 1, as amended, provides that title to all tribal, allotted, assigned, and inherited lands or interests within the taking area of the Oahe Dam and Reservoir on the Missouri River and in the Standing Rock Sioux Reservation shall be taken by the United States. It also provides that the effective date of this act shall be the date that the Secretary of the Interior shall by proclamation declare that this agreement has been accepted by a three-fourths majority of the adult Indians of said reservation.

Section 2 states that the United States agrees to pay out of funds appropriated for the construction of the Oahe project the sum of \$5,575,000 as just compensation for all lands and improvements and interests conveyed pursuant to section 1 of this act. This sum of \$5,575,000, which shall be the final and complete settlement of all claims, rights, and demands of the Indians of said tribe rising out of the construction of the Oahe project shall be deposited in the United States Treasury and shall draw interest at the rate of 4 percent per annum. Section 2 also provides that \$1,769,168 of the above sum (\$5,575,000) shall be distributed to the owners of the lands whether individual or tribal in accordance with the tract and ownership schedules prepared and submitted by the Missouri River Basin investigation staff with the approval of the tribal council and the Secretary of the Interior. Section 2 has been amended to provide that one-half the balance of said sum (\$5,575,000 minus \$1,769,168 equals \$3,805,832) or \$1,902,916 shall be consolidated with the appropriations made pursuant to section 5 of this act (\$8,500,000) and shall be expended in accordance with the provisions of such section 5. The amendment stipulates that no part of the \$1,902,916 shall be used for per capita payments.

Section 3 provides that the United States agrees to appropriate, and the Secretary of the Army is directed to make available from Oahe project construction funds, additional sums for relocating and establishing the Indian cemeteries, tribal monuments, and shrines within the taking area.

Section 4 stipulates that the United States agrees to appropriate, and the Secretary of the Army is directed to make available from Oahe project construction funds, additional sums for relocation and reconstruction of such agency facilities as deemed essential by the Secretary of the Interior, schools, hospitals, service buildings, agents and employees' quarters, roads, bridges which have or may be impaired by the construction of the Oahe Reservoir on Standing Rock Reservation.

Section 5 provides that, in addition to the \$5,575,000 sums to be

paid in accordance with section 2 above, the United States further agrees to appropriate and make available the sum of \$8,500,000 for developing individual and family plans, relocating, reestablishing, and providing other assistance designed to help improve the economic and social status of all members of the Standing Rock Sioux Tribe who are residing on the reservation at the time of the passage of the act, whether or not residing within the taking area of the Oahe project. Said sum shall be deposited in the Treasury of the United States to draw interest at the rate of 4 percent per annum. It is also provided that this sum shall be expended only upon the order of the tribal council and with the approval of the Secretary of the Interior and for purposes set forth in this section. It is further provided that the sums authorized in section 16 of this act shall remain available for 10 years from the effective date of this act, and, finally that no part of such funds may be used for per capita payment.

Section 6 reserves to the Indians all mineral rights within the taking area.

Section 7 gives to the Indians the right without charge to remove and salvage timber and improvements within the taking area by demolition or removal. Salvage permitted under this section shall not be construed to be double compensation.

Section 8 states that a hazard to livestock is created by the rise and fall of the water to be impounded in the Oahe Reservoir and places on the United States responsibility to take such protective measures as may be necessary to minimize livestock losses.

Section 9 provides that members of the tribe now residing within the taking area shall have the right to remain on and use the lands until the gates of the Oahe Dam are to be closed for the impoundment of the water of the Missouri River. It also provides that all individuals and personal property shall be removed from the taking area before the gates are closed and that the United States shall not be liable for damages to such individuals or personal property not so removed from the taking area after the gates are closed.

Section 10 lists the districts and the times under which members of the Standing Rock Tribe shall vacate the taking area. This section also states that changes in the above schedule may be made at the discretion of the Chief of Engineers and with the approval of the Secretary of the Interior.

Section 11 provides that the United States shall give assistance to the tribal members whose lands are within the taking area in purchasing other land the title to which shall be taken in the name of the United States in trust for the purchasers. It is stipulated that such trust may be terminated when in the judgment of the Secretary of the Interior the Indian beneficiary has become legally competent.

Section 11 also provides that holders of exchange assignments within the taking area shall be regarded as holders of trust patents and shall be accorded the same privileges and procedures as holders of lands held in trust. This section further provides that the moneys used for the purchase of substitute land shall be provided by the purchaser from the sum placed to his credit for the transfer of his lands, improvements, and timber under the authority of this agreement. The lands so purchased as substitute allotments may be either within or without the boundaries of the Standing Rock Reservation. Finally, because the United States should not take a trust title to land located

Section 16 describes the tracts of lands in the States of North and South Dakota conveyed by this agreement to the United States.

MINORITY VIEWS

We are opposed to the enactment of the bill H. R. 5608 for the following reasons:

First: We do not believe that congressional committees should take on the obligation of fixing land valuations of property taken for a public purpose.

Second: We do not believe that the values set in the bill for the land taken are fair but, on the contrary, border on the exorbitant.

Third: We think it is improper to combine in legislation fixing the value of Indian lands taken for a public purpose the wholly separate matter of providing for the "rehabilitation" of the entire Indian tribe.

Each of these points will be discussed separately.

First: Congressional committees should not sit as juries in condemnation

This bill arises out of the fact that the Oahe Dam and Reservoir project is being constructed, which would flood a portion of the Standing Rock Sioux Indian Reservation. The purpose of the bill is to set a valuation on these lands. We do not believe that a congressional committee should undertake this task which is ordinarily handled by a Federal court and a jury when there is a dispute about the valuation, as there is in this case. It is perfectly apparent that no congressional committee has the time to sit and take the testimony necessary to a fair valuation of the property. In this case the Indians and their lawyers have undertaken to get a legislative or what might be more accurately called a political settlement of their argument with the Government about the fair amount to be paid. If this precedent is established and continued our committee will be called upon to set the valuation of lands taken for a public purpose whenever Indian property is involved. In addition, if such precedent is established there is no reason why it should not be applied in every case where the Government builds a dam; otherwise, the Indians become a preferred class of citizens entitled to have their land valued by congressional committees rather than under the usual judicial procedures. There are a number of bills of this same character pending in our committee, and we can anticipate a good many more if this legislation is permitted to be enacted. We have regular procedures through the courts for the purpose of establishing the value of land taken for public projects, and that procedure should be followed by Indian citizens, as well as all other citizens.

Furthermore, this legislation only provides a floor for the amount allotted, inasmuch as any Indian who is dissatisfied with the proposed amount allowed for his land may refuse to take it and to go court. At the present time, the executive agencies have the power to make an offer of settlement which, if rejected, can be taken to court. By this legislation the committee has undertaken to raise the figure of every agency that has appraised the land, make that the floor, and then tell the Indians that if they don't like it they can still go to court.

We ask that this kind of precedent not be established, but that the Indians be given equal treatment with other citizens in the determination of the value of lands taken for a public purpose.

Second: The amounts allowed in the bill are not only unfair, but exorbitant

The amount of money allowed to the Indians in this legislation is a good illustration of why it is unwise to establish the precedent of permitting congressional committees to take over the functions of a jury hearing a condemnation case. The amount allowed by the committee is higher than the amount suggested by the Army engineers, the Interior Department, or the private concern employed to make a valuation. The Army engineers' valuation would be approximately \$28 per acre for the 56,000 acres, and the valuation by the private concern approximately \$23 per acre. The figure allowed by the committee would be approximately \$100 an acre.

The committee, in addition to allowing a sum for the actual value of the land, threw in so-called intangible values in an amount of over \$3,800,000. This is not a recognized basis under the decisions of our courts for establishing the value of lands taken for a public purpose, and here again the sponsors of this legislation are seeking a different, preferential, and more generous rule when applied to the Indians than to any other American citizen, and are establishing a precedent for further and even worse raids on the Treasury.

Not only are the Indians here allowed more money than any agency has valued the land, a valuation for so-called intangibles not recognized in condemnation law at all, but in addition are allowed expense incurred in the negotiations not to exceed \$100,000, which is a polite way of saying attorneys' fees. The Indians are wards of the Federal Government, and the Indian service is established for the purpose of representing the Indian tribes in this matter as a guardian.

Added to all of these items is the so-called rehabilitation amount for which there is an allowance of \$8½ million. This is in excess of \$12,000 apiece for each of the 680 families on the reservation. Adding up all the figures, this is one of the most expensive pieces of land the Government will ever get for the purpose of building a dam.

Third: The tribal rehabilitation claim is a separate matter and should be handled separately

The device of tying in settlement of a tribal rehabilitation claim for the whole tribe with the amount due 170 families living on the property actually taken is wrong in principle, and should never be permitted. The two claims inevitably get mixed together and the less clearly defined one (rehabilitation) immediately becomes the place to take up the slack in the claims of the Indians for their land. The total claims made by the tribal council in this case are in excess of \$26 million. The highest valuation placed on the land itself is \$1,600,000. By throwing in almost \$4 million for "intangible" damages and then adding \$8½ million for "tribal rehabilitation," the face of the amount of the bill becomes \$14,075,000, which is a little more than half of what the Indians have been holding out for.

In our opinion, it is improper to tie the two together because they are distinctly separate matters. Whatever should be done for the Indians by way of rehabilitation should be done independent of the settlement for the land taken by the reservoir; the Indians should be

paid a fair price for the land taken for the reservoir; the 170 Indian families living on that land should be adequately and fairly compensated.

If rehabilitation is necessary for the 680 families of the tribe, then that matter should be heard and studied separately and put in separate legislation. Otherwise, the temptation to shift over into the rehabilitation fund some amounts in controversy with respect to land valuation becomes irresistible, and in fact easy, because rehabilitation is a very difficult thing to define, and the amounts necessary or proper for that purpose only an enlightened guess at best.

For the foregoing reasons, we believe that this bill should be returned to the committee. A new bill should be written authorizing the Government to proceed under the laws relating to condemnation in establishing the valuation of the lands taken. That is necessary because there is some argument as to whether or not the Government can condemn lands belonging to an Indian tribe. It would be appropriate, in our opinion to authorize the Bureau of Indian Affairs to employ special counsel as guardian for the Indians to represent the Indians in such proceedings. Further, the rehabilitation provisions of the bill should be stricken and taken up and brought to Congress in separate legislation. The foregoing procedure will not deprive the Government of its present power to make a settlement with the Indians for the value of their lands and depositing such an offer in court, as is done at the present time with reference to the taking of lands of other citizens for a public purpose. If no agreement can be reached between the Indians and the Government, then the valuation of the property can be set after a thorough inquiry in the matter, as is done in every other case where the Government builds a dam and reservoir and must take private property for that purpose.

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